

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

|                                |   |                  |
|--------------------------------|---|------------------|
| <b>JOHNNY M. RODRIGUEZ,</b>    | ) |                  |
|                                | ) |                  |
| <b>Plaintiff,</b>              | ) | <b>8:04CV576</b> |
|                                | ) |                  |
| <b>vs.</b>                     | ) | <b>ORDER</b>     |
|                                | ) |                  |
| <b>UNION PACIFIC RAILROAD,</b> | ) |                  |
|                                | ) |                  |
| <b>Defendant.</b>              | ) |                  |

This matter is before the court the plaintiff's motion to extend the discovery deadline (Filing No. 33); the plaintiff's motion to compel (Filing No. 35); objections by the defendant (Filing Nos. 36 and 37); and the plaintiff's response (Filing No. 38) and notice of withdrawal (Filing No. 39). On January 12, 2006, the plaintiff filed his motions to extend and to compel. The plaintiff seeks an extension of the discovery deadline by four weeks, to February 14, 2006, due to incomplete and disputed discovery. The plaintiff's motion to compel relates to numerous interrogatories and requests for production. The plaintiff did not file a brief or index of evidence with the motion. The plaintiff states such non-compliance with the local rules was due to a filing error which was compounded by office staffing problems. Therefore, the plaintiff seeks to withdraw the motion to compel and refile the motion with the brief. The defendant opposes both the extension of deadlines and the premature filing of the motion to compel. Specifically, the defendant contends the plaintiff failed to wait until after "personal consultation with counsel for opposing parties and sincere attempts to resolve differences" before filing either motion. **See** NECivR 7.1(i). The defendant states the plaintiff delayed in attempting to resolve the differences, then failed to wait for a response which was prepared in a timely manner. The defendant indicates its desire to work with the plaintiff to resolve the pending discovery disputes. The plaintiff denies the defendant has produced "key evidence" as claimed by the defendant. Under the circumstances, the court will grant a brief extension of the discovery deadline to allow the parties to attempt to resolve the discovery dispute. Additionally, the court will allow the plaintiff to withdraw the motion to compel. The motion to compel should not be refiled until after all sincere attempts to resolve the disputes are

exhausted. Finally, should the plaintiff find it necessary to file a motion to compel, the motion should comply in all respects with the local rules, including a contemporaneously filed brief and index of evidence with the appropriate showing of personal consultation with opposing counsel. **See** NECivR 7.1. Upon consideration,

**IT IS ORDERED:**

1. The plaintiff's motion to extend the discovery deadline (Filing No. 33) is granted. The deadline to complete discovery is extended from January 17, 2006, to **February 14, 2006**.

2. The plaintiff's motion to compel (Filing No. 35) is terminated as withdrawn.

3. The defendant's objection (Filing No. 36) is overruled, as moot.

4. The defendant's objection (Filing No. 37) is overruled.

5. The plaintiff's notice of withdrawal (Filing No. 39) is granted.

DATED this 17th day of January, 2006.

BY THE COURT:

s/Thomas D. Thalken  
United States Magistrate Judge